

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JOHN FREDERICK BALLENTINE,
Petitioner-Appellant,

v.

No. 97-7568

WARDEN OF GREENSVILLE
CORRECTIONAL CENTER,
Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke.
James C. Turk, District Judge.
(CA-97-181-R)

Submitted: June 30, 1998

Decided: July 30, 1998

Before ERVIN, WILKINS, and MICHAEL, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

COUNSEL

John Frederick Ballentine, Appellant Pro Se. Thomas Drummond
Bagwell, Assistant Attorney General, Richmond, Virginia, for Appel-
lee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

John Frederick Ballentine filed a petition for habeas corpus relief under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), which was referred to a magistrate judge for a report and recommendation, who recommended dismissing the petition. The report contained language advising Ballentine that he must file written objections to the report within ten days of service, pursuant to 28 U.S.C. § 636(b)(1)(C) (1994); Fed. R. Civ. P. 72(b).

The magistrate judge's report was entered on the district court's docket on October 20, 1997, and objections were due on November 3, 1997. On October 27, 1997, Ballentine mailed a nine-page document he entitled "Appeal" to the district court and the respondent. The document does not specifically express an intent to appeal to this Court, but takes issue with various aspects of the magistrate judge's report and recommendation.

This Court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (1994), and certain interlocutory orders. 28 U.S.C. § 1292 (1994); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). The magistrate judge's report is not such an order. However, according Ballentine's document a liberal construction, see Gordon v. Leeke, 574 F.2d 1147 (4th Cir. 1978), we construe the "appeal" notice as objections to the magistrate judge's report. We therefore deny a certificate of appealability, dismiss the appeal and remand the case to the district court with instructions to construe Ballentine's filing styled "Appeal" as timely objections to the magistrate judge's report. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

DISMISSED AND REMANDED